

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Lorenzo Harrison,)	CASE NO. 1:12 CV 202
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Ohio Department of Rehabilitation)	<u>Memorandum of Opinion and Order</u>
and Correction,)	
)	
Respondent.)	

This matter is before the Court upon Petitioner's motion for relief from this Court's judgment denying him habeas corpus relief related to his convictions for rape and kidnapping. This Court denied Petitioner's habeas petition on February 10, 2015. Petitioner appealed that judgment to the Sixth Circuit Court of Appeals on March 19, 2015. On April 1, 2015, Petitioner filed a motion with this Court seeking relief from judgment pursuant to Fed. R. Civ. P. 60(b)(1),(2), and (6). (Doc. 35).

This Court lacks jurisdiction to consider and decide Petitioner's motion while his appeal is pending in the Sixth Circuit Court of Appeals. *Adkins v. Jeffreys*, 327 Fed. Appx. 537, 539 (6th Cir. 2009); *Dunham v. United States*, 486 F.3d 931, 935 (6th Cir. 2007).

However, the Sixth Circuit has carved out a limited exception, allowing for some consideration of a motion for relief from judgment which will aid in an appeal. *Adkins*, 327 Fed. Appx. at 539. The proper procedure is that a Petitioner may file his Rule 60(b) motion in the District Court. If the District Court indicates that it will grant the Rule 60(b) motion, then the Petitioner may make a motion in the Sixth Circuit Court of Appeals to remand the case. If the District Court is not disposed to grant the Petitioner's Rule 60(b) motion, then his appeal will be decided by the Sixth Circuit Court of Appeals in the regular course. *Adkins*, 327 Fed. Appx. at 539; *Dunham*, 486 F.3d at 935; *First National Bank of Salem, Ohio v. Hirsch*, 535 F.3d 343, 346 (6th Cir. 1976). The decision of whether to consider Petitioner's Rule 60(b) motion while his appeal is pending is within the sound discretion of the District Court. There is no error if the District Court declines to consider the Rule 60(b) motion. *Adkins*, 327 Fed. Appx. at 539.

After review, the Court concludes that it will not consider Petitioner's motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b). Accordingly, the motion is denied for lack of jurisdiction.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 5/1/15